

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

NEUROGRAFIX, a California corporation;  
NEUROGRAPHY INSTITUTE MEDICAL  
ASSOCIATES, INC., a California  
corporation; and IMAGE-BASED  
SURGICENTER CORPORATION, a  
California corporation,

Plaintiffs,

vs.

Civil Action No. 12-cv-6068

THE UNIVERSITY OF CHICAGO  
MEDICAL CENTER, an Illinois  
corporation; THE UNIVERSITY OF  
CHICAGO, an Illinois corporation,

Defendants.

**COMPLAINT FOR PATENT  
INFRINGEMENT AND DEMAND FOR JURY TRIAL**

Plaintiffs NeuroGrafix, Neurography Institute Medical Associates, Inc. ("NIMA"), and Image-Based Surgicenter Corporation ("IBSC") (collectively, "Plaintiffs") allege as follows:

**PARTIES**

1. Plaintiff NeuroGrafix is a California corporation with its principal place of business located at 2716 Ocean Park Boulevard, Suite 3075, Santa Monica, California 90405.
2. Plaintiff NIMA is a California corporation with its principal place of business in Santa Monica, California.
3. Plaintiff IBSC is a California corporation with its principal place of business in Santa Monica, California.

4. On information and belief, Defendant The University of Chicago Medical Center is an Illinois corporation with its principal place of business located at 5841 S. Maryland Avenue, Chicago, Illinois 60637.

5. On information and belief, Defendant The University of Chicago is an Illinois corporation with its principal place of business located at 5801 S. Ellis Avenue, Chicago, Illinois 60637.

6. The University of Chicago Medical Center and The University of Chicago are collectively referred to as "Defendants." On information and belief, Defendants collectively work together to offer the infringing products and services, described below, at the medical facilities affiliated with and/or operated by The University of Chicago.

#### **JURISDICTION AND VENUE**

7. This case is an action for patent infringement of United States Patent No. 5,560,360 (the "'360 Patent") under the Patent Laws of the United States, as set forth in 35 U.S.C. §§271 and 280 through 285.

8. This Court has federal subject matter jurisdiction over this action under 28 U.S.C. §§1331, 1332(a)(1), 1332(c)(1) and 1338(a).

9. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a), 1391(c), and 1400(b), including without limitation because Defendants are advertising, marketing, using, selling, and/or offering to sell products in this Judicial District.

#### **BACKGROUND**

10. The University of Washington, a public institution of higher education in the state of Washington, is the owner by assignment of the '360 Patent entitled "Image Neurography and

Diffusion Anisotropy Imaging." The '360 Patent issued on October 1, 1999. A true and correct copy of the '360 Patent is attached as Exhibit A.

11. Aaron G. Filler, Jay S. Tsuruda, Todd L. Richards, and Franklyn A. Howe are listed as the inventors of the '360 Patent.

12. Washington Research Foundation ("WRF"), a not-for-profit corporation incorporated and existing under the laws of the State of Washington, holds substantially all rights in the '360 Patent and has exclusively licensed substantially all rights in the '360 Patent to NeuroGrafix in December of 1998.

13. NeuroGrafix, NIMA and IBSC have been investing in and practicing the technology disclosed in the '360 Patent since at least 2000.

**COUNT I**  
**PATENT INFRINGEMENT**

14. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 13 above, inclusive, as if fully repeated and restated herein.

15. Defendants have been and still are directly (literally and under the doctrine of equivalents) infringing at least claim 36 of the '360 Patent by making, using, selling, offering to sell, or importing, without license or authority, products and services that include, without limitation, the performance of DTI and diffusion anisotropy based tractography. Thus, by making, using, importing, offering for sale, and/or selling such products and software, Defendants have injured Plaintiffs and are thus liable to Plaintiffs for infringement of the '360 Patent under 35 U.S.C. § 271(a).

16. To the extent that facts learned in discovery show that Defendants' infringement of the '360 Patent is or has been willful, Plaintiffs reserve the right to request such a finding at the time of trial.

17. As a result of Defendants' infringement of the '360 Patent, Plaintiffs have suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

18. Defendants' wrongful acts have damaged and will continue to damage Plaintiffs irreparably, and Plaintiffs have no adequate remedy at law for those wrongs and injuries. In addition to their actual damages, Plaintiffs are entitled to a permanent injunction restraining and enjoining Defendants and their agents, servants and employees, and all persons acting thereunder, in concert with, or on their behalf, from infringing the '360 Patent.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court enter:

1. A judgment in favor of Plaintiffs that Defendants have directly infringed the '360 Patent;
2. An injunction enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert or privity with any of them from infringing, inducing the infringement of, or contributing to the infringement of the '360 Patent;
3. A judgment and order requiring Defendants to pay Plaintiffs their damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '360 Patent as provided under 35 U.S.C. § 284;
4. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiffs their reasonable attorneys' fees; and
5. Any and all other relief to which Plaintiffs may show themselves to be entitled.

**JURY TRIAL DEMANDED**

Plaintiffs hereby demand a trial by jury of all issues so triable.

Respectfully submitted,

Dated: August 1, 2012

s/ Kirsten L. Thomson  
Kirsten L. Thomson (ID No. 6293943)  
(thomson@mbhb.com)  
**McDonnell Boehnen Hulbert & Berghoff LLP**  
300 South Wacker Drive  
Chicago, Illinois 60606  
Tel.: (312) 913-0001  
Fax: (312) 913-0002

Marc A. Fenster  
(mfenster@raklaw.com)  
Andrew D. Weiss  
(aweiss@raklaw.com)  
Fredricka Ung  
(fung@raklaw.com)  
**Russ August & Kabat**  
12424 Wilshire Boulevard, 12th Floor  
Los Angeles, California 90025  
Tel. 310.826.7474  
Fax 310.826.6991

**Attorneys for Plaintiffs,  
NEUROGRAFIX, NEUROGRAPHY  
INSTITUTE MEDICAL ASSOCIATES, INC.,  
AND IMAGE-BASED SURGICENTER  
CORPORATION**